

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF:)	
)	
CLINTON POLICE DEPARTMENT)	CASE NO. 8087
BARGAINING UNIT,)	
Petitioner.)	
)	

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RULING

The matter before the Public Employment Relations Board (PERB or Board) is the petition for declaratory order filed February 11, 2009 by the Clinton Police Department Bargaining Unit (the Union). The Union's brief in support of the petition was filed February 25, 2009.

Iowa Code section 17A.9(1) provides that persons may petition the Board "for a declaratory order as to the applicability to specified circumstances of a statute, rule or order within the primary jurisdiction of the agency." Iowa Code section 17A.9(2) requires agencies to adopt rules providing for the form, contents, filing and disposition of petitions for declaratory orders. Accordingly, chapter 10 of PERB's rules was adopted, which governs petitions for declaratory orders filed with the Board.

While the Union's petition does not fully comply with PERB rule 621-10.2, it is sufficient for us to discern its factual underpinnings and the question being posed.

The petition recites a set of facts indicating, essentially, that the Union and the City of Clinton engaged in grievance arbitration pursuant to their collective bargaining agreement, and that a grievance arbitrator rendered a decision which the Union thinks was contrary to the parties' agreement regarding minimum staffing levels.

The petition references Iowa Code section 20.18, which provides, in part, that "[a]n arbitrator's decision on a grievance may not change or amend the terms, conditions or applications of the collective bargaining agreement." The petition alleges that the arbitrator's decision altered or amended the collective bargaining agreement by negating the agreement of the parties concerning minimum staffing and seeks our determination of whether the arbitrator violated Iowa Code section 20.18 by modifying the terms, conditions or applications of the collective bargaining agreement.

While one could thus argue that the petition, if recast into the language of Iowa Code section 17A.9(1), might technically pose a question of section 20.18's applicability to the arbitrator's actions, in reality what it asks PERB to do is to review the arbitrator's award, make a determination that the arbitrator exceeded his power or authority, and grant the union specific relief. While section 20.18 does provide a statutory limitation on the power of grievance arbitrators, it does not

provide PERB with authority to review or disturb their awards as sought by the Union.¹ Nor do we think section 17A.9(1) can be reasonably interpreted as granting such authority.

Moreover, there is a specific statutory procedure available to the Union to seek the vacation of a grievance arbitration award. See Iowa Code § 679A.12. See also *Cedar Rapids Association of Fire Fighters v. City of Cedar Rapids*, 574 N.W.2d 313 (Iowa 1998) (challenge to grievance arbitration award on grounds, like those asserted here, that arbitrator modified the collective agreement and thus exceeded arbitrator's authority).

PERB subrule 621-10.9(1) provides that the Board may refuse to issue a declaratory order on a number of grounds, one of which is when the question presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter. See 621-10.9(1)(e). While additional rule 621-10.9(1) grounds for refusing to issue a declaratory order also appear to be present, we think it unnecessary to address them since the 621-10.9(1)(e) ground is clearly applicable here. We thus decline to issue a declaratory order as requested by the Union and its petition is

¹ PERB has long held that it is not its function to construe collective bargaining agreements or to declare the parties' rights thereunder, except in those limited cases where a violation of an agreement is alleged to constitute a prohibited practice, or where a provision of the parties' agreement is asserted as a defense to a prohibited practice claim. See, e.g., *Iowa County*, 01 PERB 6347; *City of Keokuk*, 75 PERB 433.

consequently DISMISSED.

Dated at Des Moines, Iowa, this 25th day of February, 2009.

PUBLIC EMPLOYMENT RELATIONS BOARD


James R. Riordan, Chair


M. Sue Warner, Board Member


Neil A. Barrick, Board Member

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